

Date of Hearing: July 13, 2021
Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 35 (Umberg) – As Amended June 17, 2021

As Proposed to be Amended in Committee

SUMMARY: Add several new crimes to the Elections Code including specifically prohibiting the obstruction of a vote by mail (VBM) ballot drop box, and prohibiting blocking parking and the ingress and egress to a vote site. Specifically, **this bill:**

- 1) Modifies the distance from which electioneering and other specified political activities near a polling location are prohibited from the 100-foot radius of protected voting space from “the room or rooms in which voters are signing the roster and casting ballots” to include 100 feet from the entrance to a building that contains a polling place, as well as the curbside voting area where a voter may drop off a ballot.
- 2) Makes it unlawful to obstruct access to a VBM ballot drop box.
- 3) Makes it unlawful to obstruct ingress, egress, or parking with the intent of dissuading another person from voting, within 100 feet of a protected voting space.
- 4) Provides that a person shall not, on election day, or at any time that a voter may be casting a ballot, do any of the following within the “immediate vicinity” of a voter “in line to cast a ballot or drop off a ballot”: solicit a vote, speak to a voter about marking the voter’s ballot, or disseminate visible or audible electioneering information.
- 5) States that a person shall not, with the intent of dissuading another person from voting, do any of the following within the “immediate vicinity” of a voter “in line to cast a ballot or drop off a ballot”: solicit a vote, speak to a voter about marking the voter’s ballot, or disseminate visible or audible electioneering information.
- 6) Makes it unlawful to display, with the intent to deceive a voter to cast a ballot in an unofficial ballot box, a container for the purpose of collecting ballots. Establishes that evidence of an intent to deceive may include using the word “official” on the container, or otherwise fashioning the container in such a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an elections official.
- 7) Makes it unlawful to direct or solicit a voter to place a ballot in an unofficial container which appears to be and is likely to deceive a voter into believing is an official collection box that has been approved by an elections official.
- 8) Requires notice of the prohibitions on electioneering be provided to the public, and requires the Secretary of State (“SOS”) to promulgate regulations specifying the manner in which

such notice shall be provided.

- 9) Requires notice regarding the prohibitions on activity related to corruption of the voting process set forth in this chapter be provided to the public, and requires the SOS to promulgate regulations specifying the manner in which such notice shall be provided.

EXISTING LAW:

- 1) Defines a “polling place” to mean a location where a voter casts a ballot and includes the following terms, as applicable: poll, polling location, and vote center. (Elec. Code, § 338.5.)
- 2) Defines “electioneering” to mean the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot within 100 feet of a polling place, a vote center, an elections official’s office, or a satellite location, as specified. (Elec. Code, § 319.5.)
- 3) Provides that prohibited electioneering information includes, but is not limited to, any of the following:
 - a) A display of a candidate’s name, likeness, or logo.
 - b) A display of a ballot measure’s number, title, subject, or logo.
 - c) Buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information.
 - d) Dissemination of audible electioneering information.
 - e) At VBM ballot drop boxes, loitering near or disseminating visible or audible electioneering information. (Elec. Code, §319.5.)
- 4) Prohibits a person, on election day, or at any time that a voter may be casting a ballot, within 100 feet of a polling place, a satellite location, or an elections official’s office, from doing any of the following:
 - a) Circulating an initiative, referendum, recall, nomination petition, or any other petition.
 - b) Soliciting a vote or speaking to a voter on the subject of marking the voter’s ballot.
 - c) Placing a sign relating to voters’ qualifications or speaking to a voter on the subject of voter’s qualifications, except as provided in current law.
 - d) Doing any electioneering as defined under current law. (Elec. Code, § 18370.)
- 5) Specifies that for the purposes of this prohibition, within 100 feet of a polling place, a satellite location, or an elections official’s office means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots. (Elec. Code, § 18370.)

- 6) Provides that it is a misdemeanor for a person, with the intent of dissuading another person from voting, within 100 feet of a polling place, to do any of the following:
 - a) Solicit a vote or speak to a voter on the subject of marking their ballot.
 - b) Place a sign relating to voters' qualifications or speak to a voter on the subject of voter's qualifications, except as provided in current law.
 - c) Photograph, video record, or otherwise record a voter entering or exiting a polling place. (Elec. Code, § 18541.)
- 7) Defines "100 feet," for these purposes, to mean a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots. (Elec. Code, § 18370.)
- 8) Provides that every person is punishable by a fine not exceeding \$1,000, or by imprisonment for 16 months or two or three years, or by both that fine and imprisonment, as specified, who does any of the following:
 - a) Aids in changing or destroying any poll list or official ballot;
 - b) Aids in wrongfully placing any ballots in the ballot container or in taking any therefrom;
 - c) Adds or attempts to add any ballots to those legally polled at any election by fraudulently putting them into the ballot container, either before or after the ballots therein have been counted;
 - d) Adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with the intent to change the result of the election, or allows another to do so, when in the person's power to prevent it;
 - e) Carries away or destroys, attempts to carry away or destroy, or knowingly allows another to carry away or destroy, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns; and,
 - f) Removes any unvoted ballots from the polling place before the completion of the ballot count. (Elec. Code, § 18568.)
- 9) Defines "vote by mail ballot drop box" to mean a secure receptacle established by a county or city and county elections official whereby a voted VBM ballot may be returned to the elections official from whom it was obtained. (Elec. Code, § 3025.)
- 10) Requires the SOS to promulgate regulations establishing guidelines based on best practices for security measures and procedures, including, but not limited to, chain of custody, pick-up times, proper labeling, and security of VBM ballot drop boxes, that a county elections official may use if the county elections official establishes one or more VBM ballot drop-off locations. (Elec. Code, § 3025.)

- 11) Permits counties, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. (Elec. Code, § 3017.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Californians have embraced an expanding array of options for casting their ballots. But state law intended to protect voters from intimidation and partisan harassment has not kept pace. Buffer zones that may have provided adequate protection to voters in the past are becoming less effective forms of protection for voters who may now wait in lines that stretch far outside of early and day-of polling places due to social distancing restrictions, increasing voter engagement, and work and family obligations that limit the times of day that many Californians are available to vote. Further, the law does not clearly provide enough protections to a growing number of early voters who cast their ballots in official vote-by-mail ballot drop boxes.

"SB 35 would modernize the laws that protect voters from intimidation and harassment at the polls by extending protections against electioneering to every voter, regardless of their physical distance from the door. SB 35 would require that notice regarding these prohibitions be provided to the public. Separately, this bill would clarify that the word "official" may not appear on unofficial ballot boxes.

"California's voters deserve to cast their ballots free of partisan harassment and intimidation. Unfortunately, during the November 2020 election, voters seeking to exercise their franchise in California were forced to wade through crowds of partisan rallygoers to vote, while voters in other states were confronted by persons engaged in other electioneering activities:

- Nevada City: According to an article in The Washington Post, residents reported that they did not feel comfortable and could not access one of the most popular ballot boxes in the county during an October 11, 2020 rally for then-President Donald J. Trump at the drop box site attended by about 300 people.
- Temecula: According to the Los Angeles Times, on November 1, 2020, police received complaints that electioneering activities conducted by an estimate 4,000 Trump supporters parked at Ronald Reagan Sports Park may be violating state elections law because the crowd was blocking access to a voting center inside the park.
- Hendersonville, Tenn.: According to the Post, a Trump supporter repeatedly drove past a polling place in a church in a large truck-and-trailer rig with Trump flags and music blaring from speakers.
- Albuquerque, NM: A convoy of vehicles, some with Trump flags, honked and yelled near a voting site on the first day of early voting.
- Craven County, N.C.: An election worker reported that a Trump supporter was "loudly exclaiming political statements" and played a Trump rally loudly on her phone within earshot of others lining up to vote.

“Separately, the Orange County Register reported that during the November 2020 election, a political party distributed more than 100 ballot collection boxes to churches, shops, local political party headquarters, and campaign offices, initially labeling at least some of them as “official” ballot drop boxes.

“The United States Supreme Court has upheld a prohibition on electioneering within 100 feet of a polling place as permissible, finding a state's interest in protecting voters from undue influence and preserving the integrity of the election process sufficient to survive strict of a limitation on speech. (*Burson v. Freeman* (1992) 504 U.S. 191.) Some 14 states have electioneering buffer zones at or around polling places that are greater than 100 feet, and at least one state, Georgia, has a flexible buffer that extends past the last person in a voting line.

“According to the California Secretary of State, 65 percent of California voters who cast ballots in the November 2018 election voted by mail, and nearly 87 percent of voters registered for the November 2020 election were vote-by-mail voters. In nine counties, 100 percent of voters are registered to vote by mail. Given the high proportion of California voters who are casting their ballots by mail, it is imperative that voters have safe access to ballot boxes.”

- 2) **Crimes in the Elections Code:** While history of the Elections Code is difficult to track prior to 1994 when the code was reorganized by SB 1547 (Chapter 920, Statutes of 1994), the crimes established by code have rarely been updated since; only once, to define “electioneering” in 2006. This bill would add several new crimes to the Elections Code including specifically prohibiting the obstruction of a VBM box, and prohibiting blocking parking and the ingress and egress to a vote site.

The proposals follow reporting by the *Los Angeles Times*, which wrote on Nov. 1, 2020, that “A massive caravan of supporters of President Trump paraded for 60 miles through Riverside County on Sunday afternoon before converging on a large Temecula sports park, blocking access to the site, which included a vote center, snarling traffic and upsetting some voters, officials there said.” (Matt Stiles, *Huge Trump Car Caravan Disrupted Some Voters in Temecula, Authorities Say*, *Los Angeles Times*, Nov. 1, 2020, available at <https://www.latimes.com/california/story/2020-11-01/trump-supporters-rally-outside-voting-center-in-temecula>.) “The Sheriff’s Department responded and cleared access to the parking lot and voter assistance center.” This bill would clarify that such obstructions are unlawful.

Regulating political speech necessarily creates tension with the First Amendment. Competing with free speech rights is the right to vote unimpeded, which has been long established. “There is a substantial and long-lived consensus among the 50 States that some restricted zone around polling places is necessary to serve the interest in protecting the right to vote freely and effectively. The real question then is how large a restricted zone is permissible or sufficiently tailored.” (*Burson v. Freeman* (1992) 504 U.S. 191, 208.)

This bill seeks to adjust the points of measurement in determining what is protected voting space where electioneering and other political activity may be curbed. Existing law defines the point of measurement to be “the room or rooms in which voters are signing the roster and casting ballots.” This bill would delete that definition and state that the entrance of the

building, and also a curbside where voting is taken place, are the terminal points to determine the area of protected voting space.

The bill would also add criminal penalties for engaging in electioneering activity in the “immediate vicinity” of a voter in line to vote. The term “immediate vicinity” is not defined by this bill. Merriam-Webster defines “immediate” to mean “existing without intervening space or substance,” “brought into immediate contact,” and “being near at hand.” Merriam-Webster defines “vicinity” to mean “a surrounding area or district” and “neighborhood.” The plain language of this statute may raise ambiguities. This standard would be interpreted and enforced across the state based on local interpretations which could lead to varied and incongruent enforcement. Arguably, this undefined term could justify imposing a 100-foot buffer zone at the end of a line of voters—in a space that extends far beyond the existing 100-foot buffer zone. Arguably, “immediate vicinity” means something much narrower. Additionally, this standard adopts a dynamic point of measurement, meaning it will change as the line of voters shrinks and expands. Should the Legislature consider defining “immediate vicinity” to clarify the area of protected voting space established by this bill?

- 3) **Unofficial Ballot Box Collections in 2020:** This bill also prohibits the collection of ballots in non-official drop boxes that purport to be “official” drop boxes following activity in the 2020 election. Various groups were collecting ballots in drop boxes that purported to be “official” government drop boxes. The New York Times reported that the California Republican Party placed more than 50 drop boxes for mail-in ballots in Los Angeles, Fresno, and Orange Counties with labels like “Official Ballot Drop Off Box” which are “virtually indistinguishable” from drop of sites operated by county elections officials pursuant to established regulations. (Glenn Thrush, Jennifer Medina, *California Republican Party Admits It Placed Misleading Ballot Boxes Around State*, New York Times, Oct. 12, 2020, available at <https://www.nytimes.com/2020/10/12/us/politics/california-gop-drop-boxes.html>.)

The Attorney General and SOS sent a cease-and-desist letter to stop the deceptive practice. This bill would clarify that displaying a ballot drop box that is fashioned to look like an official government drop box is unlawful, as is asking or directing a person to deposit their vote in a container that appears to be an official government drop box.

This bill would also prohibit a person from displaying or otherwise directing a person to vote using a VBM ballot drop box that is not authorized by county elections officials, but which appears to be and which a voter is deceived into thinking is authorized by elections officials. Thus, this makes it clear that activity like that cited above is unlawful. However, displaying an unofficial ballot collection box that clearly indicates that it is *not* an official ballot box and is *not* connected to official county election operations would still be lawful if the voter is not deceived in believing the container is an official VBM ballot drop box.

- 4) **Argument in Support:** According to the *California Teachers Association*, “During the 2020 election cycle, there were reports of attempts to demonstrate for specific candidates within close proximity of polling places as well as attempts to create unofficial ballot boxes. This proposal addresses attempts to ‘corrupt’ the voting process by ensuring voters are not subjected to false electioneering while at a designated polling place and guarantees their ballots are counted.

“CTA believes one of our most important freedoms is the right to vote and to be a full

participant in the electoral process of our nation. CTA further believes our voting system must be free of procedures dissuading voters from voting in person. Electioneering in and around a polling location can have a ‘chilling effect’ and should not be visible when a voter approaches a polling location. We believe SB 35 is a necessary change to further the opportunity for eligible voters to participate in the democratic process.”

- 5) **Argument in Opposition:** According to the *Election Integrity Project California*, “EIPCa has steadfastly held its position that third-party ballot collecting by individuals who are not close relatives or members of the household/trusted associates of the voter must not be tolerated by any system that values integrity.

“Given the prevalence and convenience of private and public mail boxes as well as community drop boxes, there is no California voter who under any circumstance would be hampered or even inconvenienced by being expected to post a ballot unaided by a third party outside the categories listed above.

“Unrestricted ballot collecting as condoned by AB 1921 (Stats. 2016, Ch. 820, Elections Code 3017(e)) opens the door to voter harassment and intimidation, vote buying and selling and many other forms of election corruption. Voters and observers have provided documentation to EIPCa signed under penalty of perjury that all of the above situations were manifested as a result of AB 1921. Los Angeles prosecuted cases of so-called ballot harvesters paying individuals for their signatures.

“In addition, unrestricted ballot collecting completely removes chain of custody, so that ballots can no longer be ensured to be legitimate. The damage done not only to election integrity but to voter trust and confidence as a result is fatal to a free society.

“SB 35 assumes that certain types of third-party ballot collection are legitimate and that others are not. EIPCa reiterates that no form of unrestricted ballot collecting is legitimate or conducive to a healthy democratic process.

“If the legislature is sincere in its desire to encourage every eligible Californian to register and vote, then it needs to provide them with a system that is secure and trustworthy, one that engenders trust and confidence that all votes will be legitimate and that their vote will be equal to all other votes and receive due and legal process.

“EIPCa urges the legislature to re-examine the issue of third-party ballot collection, and return to the pre-AB 1921 standards for the protection of voters and the integrity of their voice in government.”

6) **Related Legislation:**

- a) SB 742 (Pan) would make it a crime to “harass,” as defined, within 30 feet of a person who is within 100 feet of a medical facility offering vaccines. SB 742 is currently pending before the Assembly Appropriations Committee.
- b) AB 1356 (Bauer-Kahan) would make it a crime to film or record a person entering a reproductive health facility within 100 feet of the facility. AB 1356 is currently pending

before the Senate Judiciary Committee.

7) Prior Legislation:

- a) AB 1921 (Gonzalez), Chapter 820, Statutes of 2016, permitted a VBM voter to who is unable to return his or her ballot to designate any person to return the ballot, as specified, and prohibited the designated person from receiving any form of compensation based on the number of ballots they return.
- b) AB 1337 (Evans), Chapter 146, Statutes of 2009, defined “electioneering.”
- c) AB 603 (Garcia), of the 2003-2004 Legislative Session, would have defined “electioneering.” This bill failed passage on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters
California Teachers Association
Disability Rights California
Orange County Employees Association

Opposition

Election Integrity Project California

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